CANADIAN RAILWAY OFFICE OF ARBITRATION

SUPPLEMENTARY AWARD

TO

CASE NO. 1150

Heard at Montreal, Thursday, April 12, 1984

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Eastern Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

(Decided on the basis of the parties' written submissions)

There appeared on behalf of the Company:

P. A. Pender	- Supervisor Labour Relations, CPR, Toronto
R. A. Colquhoun	- Labour Relations Supervisor, CPR, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen	- System Federation General Chairman, BMWE, Ottawa
L. DiMassimo	- Federation General Chairman, BMWE, Montreal
R. Y. Gaudreau	- Vice-President, BMWE, Ottawa
G. Valence	- General Chairman, BMWE, Sherbrooke

AWARD OF THE ARBITRATOR

The parties are apart on the implementation of my original award where the company was found in violation of the notice provisions of Article 8.1.

It is important to emphasize that the scope of my authority to provide a remedy for the employer's breach is limited to placing the aggrieved employees in the very same position had the employer complied with Article 8.1 of the collective agreement.

It is my view the only prejudice that has arisen from the employer's denial of the three month notice period is the missed opportunity for the General Chairman to negotiate during that period the adverse effects of the proposed change. In this regard the employees have been deprived of the benefits of union representation and the elaborate mechanism provided under Article 8 that includes the negotiation, mediation and arbitration of any alleged adverse effect. It is in this context that the aggrieved employees have been shown to

be entitled to compensation.

Even if the company had complied with the three month notice provision, on December 31, 1982, it would have been free to go ahead with the proposed change. It may very well be that after Dec.31,1982 the mechanisms of resolving the adverse effects of the change provided under Article 8 would have continued concurrently with the employer's implementation. Nevertheless once implemented, the aggrieved employees, effective December 31, 1982, would then have been entitled to maintenance of basic rates benefit under Article 8.9.

To repeat, the aggrieved employees cannot be placed in any better position than had the employer complied with Article 8.1. And, as I have suggested, their entitlement is to compensation for the three month period that their trade union representative was deprived of the opportunity to negotiate on their behalf the adverse effects of the proposed change.

The trade union claims that because the employer failed to give notice,such notice of three months duration should be directed effective the date of my original decision. The effect of that submission if successful, would operate to roll back the change. This simply is not what the collective agreement contemplates. The collective agreement anticipates a minimum notice period of three months during which time the employer is prevented from implementing its proposed change. If the trade union's submission is acceded to a notice period of approximately fifteen months would result.

The Article 8 notice provision allowing the negotiation, mediation and arbitration of the adverse effects of the proposed change before which no implementation can take place is not intended to be open ended. At best, the notice period terminates on the expiry of three months. Accordingly since the grievors were deprived of that three month benefit the company is directed to compensate them for that period at the appropriate rate of pay.

DAVID H. KATES,
ARBITRATOR.